

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET C. VEIHMAN and U.S. POSTAL SERVICE,
POST OFFICE, DeSoto, Mo.

*Docket No. 97-1723; Submitted on the Record;
Issued May 3, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability after August 1993 that was causally related to her accepted October 21, 1991 employment injuries of acute lumbar strain and herniation of nucleus pulposus at the L4-5.

On October 22, 1991 appellant, then a 38-year-old rural mail carrier associate, filed a notice of traumatic injury and claim, alleging that she sustained low back pain, right leg numbness and tingling in both legs on October 21, 1991 after lifting a parcel from a hamper. On November 4, 1991 the Office of Workers' Compensation Programs accepted appellant's claim for acute lumbar strain. On November 25, 1991 the Office authorized lumbar laminectomy surgery. Subsequently, appellant was referred for vocational rehabilitation. On July 27, 1992 appellant returned to work with restrictions on lifting and carrying over 10 pounds.

On November 30, 1992 appellant filed a claim for recurrence of disability beginning November 9, 1992. Appellant underwent surgery on December 30, 1992. By decision dated December 16, 1992, the Office accepted appellant's claim for recurrence of disability beginning November 20, 1992. On March 30, 1993 appellant returned to work with the same restrictions she had in July 1992.

On September 14, 1993 appellant filed a second claim for recurrence of disability beginning August 30, 1993. Appellant indicated that although she was on limited duty, she was in constant pain, had urinary and bowel problems and was dragging her right foot more. In a decision dated November 10, 1993, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the claimed disability and her accepted work injuries. On October 12, 1994 an Office hearing representative affirmed the November 10, 1993 decision of the Office. By decisions dated October 19, 1995 and January 16, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not established a recurrence of disability after August 1993 that was causally related to her accepted employment injury.¹

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position, or medical evidence of record establishes that she can perform at the work of a light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of the burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In the present case, the Office denied appellant's claim for recurrence of disability based on its findings that the medical evidence did not establish a causal relationship between the claimed disability or condition and appellant's injuries. Appellant submitted a number of medical reports from various physicians; however, none of the medical reports established either a change in the nature and extent of appellant's accepted injury or that she was incapable of performing her light-duty position. A review of the record reveals that appellant identified additional problems with her right foot, and she was first diagnosed with right peroneal nerve problems which caused her foot to drag in 1993, by Dr. George Schoedinger, a Board-certified orthopedic surgeon. Dr. Schoedinger noted the problem with the foot, but indicated that appellant could return to work. Appellant also submitted several reports by Dr. Gary H. Myers, a Board-certified neurologist, in which he indicated that appellant was suffering from multiple sclerosis as demonstrated by a magnetic resonance imaging scan and symptoms. In his December 27, 1994 report, Dr. Myers also noted that despite appellant's diagnosis of multiple sclerosis, she had an injury to her L4 to L5 spine which "could" explain her right-sided problems. Although the Office also accepted herniation of nucleus pulposus at the L4 to L5 level prior to the date of appellant's claim for recurrence, the opinion by Dr. Myers is not sufficient to establish a causal relationship as it is speculative. This report is also problematic as Dr. Myers also submitted a report dated January 21, 1994 in which he provided a contrary conclusion concerning whether there was a causal nexus between the right foot problems and appellant's accepted injuries. Specifically, Dr. Myers indicated that it was difficult to explain appellant's right leg weakness but he believed it was functional rather than organic. When Dr. Myers changed his opinion, he did not provide rationale for the difference in his conclusion; therefore, his subsequent opinion is not rationalized. Appellant also submitted reports by Dr. Barbara J. Green, a Board-certified neurologist, and Dr. Lawrence G. Lenke, a Board-certified orthopedic surgeon. Dr. Green's report is not sufficient to met appellant's burden of proof as it is speculative since she indicated that appellant continued to be a diagnostic enigma by history and concluded that the degree of weakness and right leg pain was "probably related" to her prior lumbar spine disease and surgeries without providing a full explanation for her

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on April 22, 1997, the only decision before the Board is the Office's January 16, 1997 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 22 (1986).

conclusion. Subsequently, she indicated that appellant's weakness may have been perception, profound symptoms of depressive illness or reactivation of multiple sclerosis. Thus, ultimately, Dr. Green did not reach a conclusion as to the source of appellant's claimed disability. Dr. Lenke focused on appellant multiple sclerosis and did not relate appellant's condition to her accepted employment injuries. Therefore, while the medical evidence suggests that appellant has multiple sclerosis with progressive symptoms, it is not sufficient to establish that appellant's claimed recurrence is causally related to her accepted employment injuries or to establish that appellant was not capable of performing her limited-duty position. Appellant has not met her burden of proof.

The decision of the Office of Workers' Compensation Programs dated January 16, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 3, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member